IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

COCP No. 824 of 2007
Date of Order : 23/11/2007

Sohan Lal Arora VS. D.S.Jaspal, IAS, Secty to Govt.of Pb.

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr.Puneet Jindal, Advocate for the petitioner.
Mr.G.S.Cheema, Sr.DAG, Punjab for the respondents.

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The petitioner who was working as Medical Officer in the State of Punjab, was charged sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Subsequent to the departmental enquiry having been conducted against the petitioner, an order of dismissal of services of the petitioner was passed by the Secretary, Health and Family Welfare, Punjab on 13.9.2004.

The said order was challenged by the petitioner in a Civil Writ Petition before this Court. The order of dismissal of services of the petitioner was set-aside by this Court vide order dated 11.7.2006 as the report of the Punjab Public Service Commission was not supplied to the petitioner which has been used in the impugned order passed against him. After passing of the order, liberty was given to the respondents to follow the due procedure and to pass afresh order in accordance with law.

In terms of the liberty granted, the respondents have passed an order dated 7.10.2007, which has been appended with the reply as Annexure R-1. In the affidavit filed, it has been pointed out that the petitioner has been supplied the copy of the approval letter of the Punjab Public Service Commission, Patiala and offered him opportunity of personal hearing. Therefore, the order of punishment has been issued after following the proper procedure and the delay in issuing the speaking order was a

procedural delay and it was neither intentional nor willful.

Learned counsel for the petitioner has vehemently argued that the order dated 7.10.2007 has been produced alongwith the reply which is dated 8.10.2007. The said order has not been communicated to the petitioner so far, which shows the malafides of the disciplinary authority. It is also contended that once the order of dismissal has been set aside by this Court, the legal effect is that the petitioner is deemed to be reinstated in service and as consequence thereof, the petitioner is entitled to full back wages as well as salary till date date of superannuation. Reliance is placed on Full Bench judgment of this Court reported as "***Ram Niwas Bansal versus State Bank of Patiala and others, 2002 (2) RSJ-271".*** It is also argued that the order dated 7.10.2007 could not have been passed as the petitioner has attained the age of superannuation on 31.5.2007.

In terms of the opportunity granted by this Court, the disciplinary authority passed an order on 7.10.2007, the endorsements to various departments including to the petitioner are of dated 8.10.2007. The affidavit before this Court has been filed by the same officer who has passed the order of dismissal against the petitioner. Such order has been passed after granting opportunity of hearing to the petitioner and after supplying the information of the Punjab Public Service Commission. Thus, the mere fact that the reply has been filed on the day when the copy of the order was also endorsed, does not lead to any inference of malafide against the officer.

In respect of second argument, it may be noticed that the order of dismissal dated 13.9.2004 has been affirmed in the order dated 7.10.2007. As a necessary consequence of the said order, it is apparent that the petitioner would be deemed to be dismissed from the date on which the earlier order of dismissal was passed on 13.9.2004.

Even otherwise, the judgment referred to by learned counsel for the petitioner is clearly distinguishable. In the said case, the dismissal order was set aside in the year 1988, but the disciplinary authority has not passed any order, even when the matter came up for hearing before the Full Bench. It was, thus, found that the respondents were required to pass an appropriate order in regard to the disciplinary proceedings as well as the payment of salary to the petitioner. In fact, the Court held to the following effect:-

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> 14. In a given case, right to get the emoluments and back wages may be a logical consequence of a declaration that employee continues in service or where his order of termination is held to be illegal or without jurisdiction. But, this cannot be an absolute rule. The Court would have to examine each case on its own merits. A principle which is generally applicable can and may always have exceptions to it. Their Lordships of the Supreme Court have certainly diluted the general principles stated by the Full Bench of this Court in the case of Radha Ram (supra) and made it obligatory upon the Court not to grant reinstatement with back wages as a necessary corollary to the setting aside of an order of dismissal or termination. Certain ingredients are required to be satisfied before the Court can direct reinstatement of the employee and payment of back wages. Another case would be where the Court consciously leaves this decision to be taken by the disciplinary authority upon re-commencement of the disciplinary proceedings from a particular stage as a result of setting aside the order of dismissal. The right of the petitioner to claim back wages accrued only upon setting aside of the order of dismissal by the Court. Thus, it is a right to the

> petitioner which accrues as a matter of course resulting from setting aside of the order of dismissal by the Court. This is a substantive right which accrued upon the petitioner only consequently and not inherently. So long the order of dismissal stands, the relationship of employer and employee has come to an end and status of the delinquent officer is under a cloud.
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In a judgment reported as "***Managing Director, ECIL, Hyderabad and others Versus B.Karunakar and others, 1993 (4) SCC-727",*** the Court held that to the following effect:-

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> The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.
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Following the said view, the Hon'ble Supreme Court in ***"Hiran Mayee Bhattacharyya Versus Secretary, S.M.School for Girls and others, 2002 (10) S.C.C.-293"*** while setting aside the termination order, directed that there need not be reinstatement nor back wages to be paid.

In view of the above enunciation of principles of law, I do not find that non payment of arrears of salary from the date the order of dismissal was set aside till the date of superannuation is an act of violation of the orders passed by this Court, once the disciplinary authority has maintained the order of punishment. Therefore, in terms of the *B.Karunakar's case (supra)*, the petitioner cannot legitimately claim wages for the aforesaid period.

The argument that the order of punishment could not be passed after superannuation of the petitioner, cannot be examined in the present case. Once an order of dismissal has been passed, whether the competent authority was within its jurisdiction to pass such an order, does not fall within the meaning of contempt jurisdiction.

Consequently, the present contempt petition does not survive. The same is dismissed.

23/11/2007 (HEMANT GUPTA)
mohinder JUDGE